

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

**JOSEPH SCIONE, JR.,
Petitioner**

v.

**ROBERT HOFMANN, Commissioner,
Vermont Department of Corrections,
Respondent**

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File No. 1:08-CV-8

ORDER

The Magistrate Judge's Report and Recommendation was filed September 8, 2008. (Paper 7.) While the Court notes the Factual Background contains a typographical error, it does not affect the analysis of the case.¹ After de novo review and absent objection, the Report and Recommendation is **AFFIRMED, APPROVED and ADOPTED**. See 28 U.S.C. § 636(b)(1).

Respondent's motion to dismiss (Paper 6) is **GRANTED**. Petitioner's habeas petition filed pursuant to 28 U.S.C. § 2254 (Paper 4) is **DISMISSED**.

Pursuant to Fed. R. App. P. 22(b), the Court **DENIES** petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). In addition, because the petition has been dismissed on procedural grounds, the petitioner cannot be issued a COA due to his failure to demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

¹ The date of the state's dismissal of the petition for post-conviction relief was July 14, 2004, not June 14, 2004. See Report and Recommendation at 2, ¶ 2.

constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 29th day of September, 2008.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge